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IN THE
SUPREME COURT OF THE UNITED STATES
1972 TERM

NO. 72-157 MISC.

HARRY L. LONQUEST,

Petitioner,

vs.

THE STATE OF WYOMING

Respondent.

# BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WYOMING

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September 29, 1972

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TO: THE HONORABLE, THE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES

The Respondent, State of Wyoming, respectfully prays that this Court deny the Petition for a Writ of Certiorari filed in the above-captioned case.

## STATEMENT OF THE CASE

On July 10, 1970, Petitioner Harry Lonquest, after considerable planning, shot his wife in the back at a range of four feet with a twelve guage shotgun, killing her. On the morning of the crime, the Sheriff of Platte County, Wyoming proceeded to the Lonquest ranch in response to an emergency call initiated by the Petitioner (R-40). The Sheriff did not go to the Lonquest ranch with the intention of arresting the defendant and had absolutely no idea what to expect when he arrived. Immediately upon arrival and before any questions were asked the defendant said, "I told her I would shoot her, she wouldn't listen to me so I shot her." (R-485, 589, 590.)

Later in the day the defendant gave a complete confession to his crime. A very lengthy hearing, involving the testimony of eleven witnesses, was held outside the presence of the jury to determine the admissibility of this confession (R-728-1033). As a result of the hearing, the following facts, relevant to the denial of this Petition were shown:

At the time the statement was given, the defendant was in a hospital room in Wheatland, Wyoming. The defendant had not been placed under arrest, nor was he in police custody (R-750). He was lying in bed in loose restraints. He was not ordered placed in restraints by the County Attorney, his Deputy or any other law enforcement officer (R-743). He was apparently placed in restraints because of a request of the County Coroner, one of the main witnesses for the defense (R-731).

The questioning began approximately 3:00 p.m. (R-743) and lasted only twenty to thirty minutes (R-807). Besides the defendant, the persons present when the statement was taken were: Don Sherard, the then County and Prosecuting Attorney for Platte County; Mr. Frank Jones, the then Deputy County and Prosecuting Attorney for Platte County; and Mrs. Betty Morris, a nurse's aid (R-1062, 743). The testimony concerning defendant's confession, and the circumstances surrounding it

appears in the record at pages 743 through 809 and again at pages 1062 through 1145.

State's trial Exhibit No. 19, the defendant's confession, is found in the envelope of exhibits accompanying the record. An identical carbon copy is found at pages 163 and 164.

Even though the defendant was not under arrest, he was fully advised of his rights under the *Miranda* decision (R-745, 1066). Each of his rights was explained to the defendant separately and he was asked if he understood. In each case, the defendant replied orally in the affirmative responding either "Yes" or "I do" (R-1094). The defendant then waived his rights and specifically waived his right to have an attorney present (R-747, 1068). His responses at all times appeared to be intelligent, and at no time did the defendant seem to be suffering from any hallucinations or other adverse mental affects (R-750). The Petitioner was responsive, fully conscious and in contact with his environment at all times (R-750, 1069). Mr Sherard testified that the defendant's speech was somewhat slurred but that he had noticed this same characteristic when he had conversed with Mr. Lonquest on prior occasions (R-759,1063). There was nothing about the defendant's demeanor to indicate that he was drunk other than an odor of alcohol (R-1063). When asked if he wanted to make a statement, the defendant seemed anxious to do so and started talking right away (R-751). As the defendant spóke, his statement was reduced to writing by Mr. Sherard (R-751). A large part of the statement was volunteered, not in answer to any particular question (R-752). The defendant answered all questions propounded and his answers were both responsive and intelligent (R-752).

On three occasions during the course of the interview, the defendant corrected either Mr. Jones or Mr. Sherard when he felt that they had misstated a fact (R-753). There was no babbling or irrational speech (R-779, 1093). The defendant's confession is nearly a verbatim transcript of the defendant's

own words and represents very, very accurately what the defendant said (R-1101). At no time, were any promises or threats made to the defendant (R-758). At the conclusion of the interview, the statement was read to the defendant verbatim (R-757). Defendant was asked if he understood the statement, he said he did. He was then asked if he wanted any changes or corrections made and he said he did not. The defendant then signed the statement, without assistance and in the presence of the witnesses (R-756, 1078).

Betty Morris, the nurse's aid, testified that when Mr. Sherard and Mr. Jones came into the room the defendant appeared to recognize Mr. Sherard (R-792). Mr. Sherard advised the defendant of his rights (R-792, 1116) and asked the defendant if he would like to have an attorney whereupon the defendant replied that he would not (R-794). Mr. Lonquest was eager to talk (R-795) and the answers to the questions were responsive and intelligent and all of the answers fit the questions (R-796, 1118). The questions were answered immediately (R-797) and there were no promises or threats made (R-799). At all times, Mr. Lonquest talked coherently and the only way the witness could tell defendant had been drinking was by the smell of alcohol; there were no other unusual actions at all (R-801, 1122). Mr. Sherard never put any words in defendant's mouth (R-1143) and the statement is accurate (R-809). Prior to the arrival of Mr. Sherard and Mr. Jones, the defendant kept repeating over and over again that he had killed his wife (R-804).

Dr. James G. Allison, the only physician who observed Lonquest on the date of the crime, had treated the defendant for a mild case of delirium tremens in 1969 (R-731, 736). The doctor saw the defendant on July 10, 1970, and at the request of the County Coroner, withdrew a blood sample from the defendant's arm (R-730). At that time, the defendant smelled of alcohol but was responsive to questioning (R-730). The defendant was not suffering from hallucinations and had no

symptoms of the d.t.'s at that time. He was not delirious, not unconscious, and seemed to be firmly in contact with his environment (R-732, 1037). His speech was easily understood; he was not restless and was not in a serious condition (R-733). Dr. Allison saw the patient again on the evening of July 10. In fact, Dr. Allison observed the defendant from July 10 through July 13, and at no time did he exhibit any symptoms of hallucinations, toxic psychosis, or the d.t.'s (R-959, 1039).

The medical expert called on behalf of the prosecution concluded that there was nothing to support a diagnosis of alcoholic psychosis and that the defendant was not suffering from toxic psychosis on July 10, 1970 (R-969). The doctor testified that a man can be drunk and still have good judgment and know right from wrong (R-974). He also testified that the defendant, having used alcohol for years and years, had little sensitivity to alcohol, but rather had a profound resistance or tolerance to its toxic effects (R-1519, 1520). He stated uncategorically that the individuals actually present with Mr. Lonquest and having the ability to observe his behavior could provide very meaningful information as to the level of his awareness and his rationality (R-1499). In this regard, he felt that the testimony of Dr. Allison, the attending physician, was extremely important and should not be discredited (R-1509). Finally, the Doctor testified that assuming that the County Attorney, his assistant, and Mrs. Morris are reliable citizens, the defendant voluntarily gave the statement at 3:00 p.m. on July 10 (R-1517).

The defense psychiatrists admitted that the defendant had an increased tolerance for alcohol and, after much cross-examination, they finally admitted that an alcoholic with a high degree of tolerance would continue to perform cognitive and perceptual tasks reasonably well (R-942). Finally, it was admitted that if the defendant had the d.t.'s on July 10, Dr. Allison, the attending physician, would have known it (R-1486).

## REASONS FOR DENYING THE WRIT

**This Court is asked to substitute its judgment of the facts for that of the trial Court and its judgment as to the credibility of witnesses for that of an experienced trial judge who heard the testimony and observed the demeanor of those testifying.**

Prior to allowing the defendant's confession to come before the jury, the Court below held a hearing in the absence of the jury, to determine the voluntariness of the confession as required by *Jackson v. Denno,* 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908, 926 (1964). The hearing was not a *pro forma* or cursory procedure. Rather, it was a painstaking and lengthy inquiry into all the facts and circumstances surrounding the confession. After carefully reviewing the lengthy testimony, together with the arguments of counsel, the Court ruled, applying proof beyond a reasonable doubt as the standard, that the defendant did knowingly, intelligently and understandingly, waive his right to have counsel present at the taking of the statements; and, further that the confession was given voluntarily with full understanding of his rights and a comprehension of the consequences of giving his statement (R-1031 through 1033).

The judge's decision was well grounded on both the facts and the law. It is true that the evidence was conflicting to some extent,, but the judge, exercising his sound discretion, resolved the conflict in the only way which was reasonable, considering the record as a whole.

This Court has recently held in *Lego v. Twomey,* 404 U.S. 447, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972) that the prosecution must prove by a preponderance of evidence that the confession was voluntary, and that a stricter standard of proof is unnecessary. Here, an experienced trial judge, conscientiously applying the principles of *Jackson, supra,* and being guided by a

standard of proof more stringent than is required by this Court, determined that the State's witnesses, who were actually present when the confession was taken, were telling the truth and, that accordingly, the confession was voluntary. As is demonstrated by Respondent's Statement of the Case, the Court's decision is sustained by almost overwhelming evidence in the record. Petitioner would, nevertheless, have this Court substitute its judgment of the credibility of the witnesses for that of the trial judge who was guided at least in part by the demeanor of the witnesses, a consideration totally unavailable to this Court. The further removed this case becomes from the courtroom in Cheyenne, Wyoming, the less the likelihood of discerning the truth.

This Court has generally refused to review a dicision of a State Court based upon a question of fact. *Grayson v. Harris,* 267 U.S. 352, 358, 69L.Ed. 652 (1925). Respondent does not contend that this Court has no duty to make an independent review of the record to determine the voluntariness of a confession. We do contend, however, that where, as here, two state courts have made a determination of voluntariness under the proper standard of constitutional law, underlying factual determinations which are supported by evidence should not be disturbed. As stated by this Court in *Jackson v. Denno, supra,* at page 923 of the Lawyer's Edition report:

> "Where pure factual considerations are an important ingredient, which is true in the usual case, appellate review in this court is, as a practical matter, an inadequate substitute for a full and reliable determination of the voluntariness issue in the trial court and the trial court's determination, pro tanto, takes on an increasing finality. . . ."

In any event, it is clear from the record taken as a whole that the trial court's determination of voluntariness was correct.

**The decision of the Supreme Court of Wyoming does not conflict with a decision of the United States Court of Appeals for the Fourth Circuit nor does it conflict in principle with decisions of the United States Supreme Court.**

The facts in *Logner v. State,* 260 F.Supp. 970 (M.D.N.C. 1966) are grossly different from those in the case at bar. The Petitioner in that case had not only been drinking but he had also taken large quantities of amphetamines. The arresting officers noted that he was drunk and unable to give a statement at the time of his arrest. He was charged with drunk driving and was interrogated on three separate occasions for a total of several hours by officers who had "little patience" with him. Under similar circumstances, the Supreme Court of Wyoming would probably have found the confession to be involuntary. Actually, on appeal, the Fourth Circuit Court of Appeals affirmed on matters unrelated to the merits of the case and, in fact, did not even consider the merits.

Considering the circumstances surrounding the confession now before the Court, it is important to note that it was not taken in the oppressive environment of a police interrogation room by uniformed police officers. Rather, it was taken in the defendant's own hospital room. There was no coercion of any kind; no threats, no promises, and nothing to indicate that the defendant's will was overborne in any way. The entire procedure, including the time required to type the defendant's statement lasted less than thirty minutes. The defendant was fully and completely advised of his rights under the *Miranda* decision, and the defendant specifically waived his rights, including his right to have an attorney present during the interrogation. In fact, he said that he did not want an attorney and seemed very anxious to get on with the proceedings and confess his crime. His behavior was at all times rational, his responses were intelligent, and at no time did he appear to be

suffering from any hallucinations or even from drunkenness. He was responsive, fully conscious and in contact with his environment at all times.

The universally accepted rule is that voluntary intoxication will not cause the exclusion of a confession, otherwise voluntary, unless the intoxication produced actual mania or rendered the confessor unconscious of what he was saying. *United States v. Martin,* 434 F.2d 275 (5th Cir. 1970); *People v. Byrd,* 266 P.2d 505, 511 (Cal. 1954) cert. den. 348 U.S. 848; *State v. Warner,* 237 A.2d 150, 160 (Me. 1967); *State v. Manuel,* 217 So.2d 369, 371 (La. 1968); *People v. Schompert,* 226 N.E.2d 305 (N.Y. 1967) cert. den. 389 U.S. 874; *State v. Cuzzetto,* 457 P.2d 204, 207 (Wash. 1969); *Bell v. U.S.,* 47 F.2d 438, 439 (D.C. Cir. 1931); 2 Wharton's Criminal Evidence, Section 338 P. 122 (12th Ed.). For a recent Wyoming case to the same effect see *Kennedy v. State,* 422 P.2d 88 (Wyo. 1967).

Petitioner generally contends that the decision below is in conflict with several decisions of this Court. Respondent respectfully submits that there is no conflict and, in fact, the decision below harmonizes very well with the prior decisions of this Court.

All of the State's proof went to show that Harry Lonquest's confession was, in fact, the product of a rational intellect and that his will was not overborne. The picture painted by counsel for Petitioner of a poor mentally ill man, incoherent and chained to his bed, being brutally interrogated by two zealous prosecutors who had no regard for constitutional rights was specifically disproven at the evidentiary hearing held in conformance with *Jackson v. Denno, supra.* The scene exists only in the mind of counsel for the defense, not in fact. The evidence shows that the defendant was rational, coherent, responsive, and in full contact with his environment at all times during the interrogation. There was full compliance with *Miranda v. Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). The evidence shows that

defendant was fully and completely advised of his rights, and that he knew what he was doing when he waived them. There was no coercion, subtle or otherwise. The defendant had murdered his wife and he wanted to confess it. For this Court, or any Court to tell him now that he has changed his mind, that he cannot do so, would be a grossly unwarranted extension of the *Miranda* doctrine.

Petitioner places considerable reliance upon *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). Here, unlike *Escobedo*, the defendant's lawyer was not seeking to speak with him and the defendant had no desire to see an attorney. At no time did the defendant express a desire to see an attorney and, in fact, said that he did not want to see one. Even in cases where the defendant has indicated a desire for counsel to the interrogating officers, he is not prohibited from later changing his mind and agreeing to make a statement in the absence of counsel. *Dillon v. U.S.*, 391 F.2d 433, 437 (10th Cir. 1968).

This Court has never held that the State has an affirmative duty to seek out an attorney for an accused prior to interrogation, thus assuring that no confession will be forthcoming. If the Court ever does so hold, then the very real interests of society at large will truly be subjugated to the "rights" of the criminally inclined who continue to increase in both numbers and resourcefulness at an alarming rate.

## CONCLUSION

There is no paradox in the fact that the defendant was sent to the hospital rather than to jail and yet was able to voluntarily confess his crime. Harry Lonquest is an old man with many physical ailments. The record will show that he was hospitalized in Denver shortly before the commission of the crime for a variety of physical ills. These same physical ailments have required his hospitalization for a good percentage of the time since he has been incarcerated in the Wyoming State Penitentiary. Petitioner's declining physical health makes his crime no less brutal and no less senseless. The record shows that the defendant despised his wife, physically abused her for years, planned to kill her, did kill her and then voluntarily confessed his crime. The Writ of Certiorari to review the opinion of the Supreme Court of Wyoming should be denied.

Respectfully submitted,

/s/ Richard A. Stacy,
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COUNSEL FOR RESPONDENT

September 29, 1972.

## CERTIFICATE OF MAILING

I, Richard A. Stacy, Assistant Attorney General for the State of Wyoming, do hereby certify that I served the within and foregoing BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI upon counsel for Petitioner by placing three copies thereof in the United States mails, postage prepaid, properly addressed to Mr. Raymond B. Hunkins, Jones, Jones and Hunkins, Attorneys at Law, P. O. Drawer 531, Wheatland, Wyoming 82201 on the 13th day of October, 1972.

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